

**STATE OF WISCONSIN
Department of Commerce**

In the matter of the PECFA Appeal of-

Joan Anich
44032 Erie Ct.
Indian Wells, CA 92210-7200

PECFA Claim #53122-9999-05
Hearing #96-33

Final Decision

PRELIMINARY RECITALS

Pursuant to a petition for hearing filed September 26, 1995, under s. 101.02(6)(e), Wis. Stats., and ILHR 47.53, Wis. Adm. Code, to review a decision by the Department of Industry, Labor and Human Relations, now Department of Commerce, a telephone preheating conference and motion hearing was held on May 30, 1996, at Madison, Wisconsin. A proposed decision was issued on June 14, 1996, and the parties were provided a period of twenty (20) days to file objections.

The issues for determination are:

Whether the department's motion to dismiss because the ineligible cost being appealed is unappealable pursuant to ILHR 47.53(1)(b)2., Wis. Adm. Code, should be granted.

There appeared in this matter the following persons:

PARTIES IN INTEREST:

Joan Anich
44032 Erie Ct.
Indian Wells, CA 92210-7200

Department of Commerce
201 East Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
By: Kristiane Randal
Assistant General Counsel
P.O. Box 7946
Madison, WI 53707-7946

The authority to issue a final decision in this matter has been delegated to the undersigned by order of the Secretary dated August 19, 1996.

The matter now being ready for decision, I hereby issue the following

FINAL DECISION

The proposed decision dated June 14, 1996, is hereby adopted as the final decision of the department.

NOTICE TO PARTIES

Request for Rehearing:

This is a final decision under s. 227.48, Wis. Stats.. If you believe this decision is based on a mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision and which you could not have discovered sooner through due diligence. To ask for a new hearing, send a written request to Department of Commerce, Office of Legal Counsel, P.O. Box 7946, Madison, WI 53707-7946.

Send a copy of your request for a new hearing to all the other parties named in this decision as "PARTIES IN INTEREST".

Your request must explain what mistake the hearing examiner made and why it is important. Or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain how your request for a new hearing is based on either a mistake of fact or law or the discovery of new evidence which could not have been discovered through due diligence on your part, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes.

Petition for Judicial Review:

Petitions for judicial review must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The petition for judicial review must be served on the Department of Commerce, Office of the Secretary, 123 W. Washington Avenue, 9th Floor, P.O. Box 7970, Madison, WI 537077970.

The petition for judicial review must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for judicial review is described in Sec. 227.53 of the state statutes.

\Dated and mailed: August 26, 1996

Patrick J. Osborne, Executive Assistant

Department of Commerce
P.O. Box 7970
Madison, WI 53707-7970

Mailing Date: September 16, 1996

cc: Parties in Interest and counsel

**STATE OF WISCONSIN
DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS**

IN THE MATTER OF:

**Request for Reimbursement Pursuant
to the Provisions of the PECFA Program**

**Hearing Number: 96-33
PECFA Claim Number: 53122-9999-05**

Joan Anich
44032 Erie Ct
Indian Wells, CA 92210

Appellant,

VS.

Wisconsin Department
of Industry, Labor
and Human Relations,

Respondent.

PROPOSED RULING ON MOTION TO DISMISS

The respondent, by its attorney, has filed a motion to dismiss the appellant's request for hearing in its entirety on the basis that there is no material fact in dispute. The motion is granted.

PROPOSED FINDINGS OF FACT

1. On September 8, 1995, the Department issued an award letter under the PECFA program denying reimbursement of costs in the amount of \$1,227.23 on the basis that those costs were incurred prior to notification of the Department of Natural Resources as required by the statutes and administrative code.

PROPOSED DISCUSSION

Chapter ILHR 47.30(2)(a) provides that any costs incurred before a confirmed discharge is reported to the Department of Natural Resources may not be reimbursed under the PECFA program. The appellant conceded that neither she nor anyone acting as her agent provided the required notification to the Department of Natural Resources. Although she asserted that she should not be penalized for the failure of her consultant to comply with the above-noted requirement and for her own ignorance of those requirements, there is no provision permitting waiver of the notification requirement. Since there is no material factual dispute to be resolved, the decision to deny costs in the amount of \$1,227.23 incurred prior to notification of the Department of Natural Resources was correct as a matter of law.

PROPOSED RULING

The respondent's motion to dismiss is granted. The appellant's appeal in this matter is dismissed.

Dated this 14th day of June, 1996.

James H. Moe
Administrative Law Judge
Madison Hearing Office
1801 Aberg Ave., Suite A
P.O. Box 7975
Madison, WI 53707-7975